



STATUS AND ENTITY
BRANCH

2004 FEB 24 PM 2:49

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

DEP 3' REF
Room 307

Patent

Attorney's Docket No. 030662-063

In re Patent Application of) **BOX 17 - ATTN: Office of Finance**
Yoji ITO) **Receipt Division, Refunds Section**
Patent No.: 6,583,832)
Issued: June 24, 2003)
For: ELLIPSOIDAL POLARIZING)
PLATE COMPRISING TWO)
OPTICALLY ANISOTROPIC)
LAYERS AND POLARIZING)
MEMBRANE)

OFFICE OF FINANCE
REFUND BRANCH
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REQUEST FOR RECONSIDERATION OF DENIAL OF REFUND REQUEST

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

On January 21, 2004, a notice was issued indicating that Applicant's refund request of March 11, 2003 was denied, without explanation (copy attached). In reviewing the file, it occurs to the undersigned that the person denying the request did not understand the circumstances. Accordingly the Request for Refund is restated and reconsideration is requested based on the following facts.

1. On July 26, 2002, a final Office Action issued in the above-captioned application.
2. On January 27, 2003, a Request for Reconsideration was filed. This Request was filed on the last day of the statutory period, together with a petition for extension of time (three months).
3. A Notice of Appeal was filed based on the possibility that the Examiner would not be persuaded by the Request for Reconsideration, and in order to maintain pendency.
4. On February 12, 2003, a Notice of Allowance issued.

5. The appearance of the Notice of Allowance means that the Request for Reconsideration placed the application into condition for allowance on its filing date of January 27, 2003. Hence, the Notice of Appeal was unnecessary insofar as there were no issues to appeal as of January 27, 2003. The fact that the Office took a couple of weeks to issue the Notice of Allowance cannot be held against the Applicant.

Stated differently, the fee paid for the Notice of Appeal was paid in excess of any fee owed insofar as at the time of its filing, an appeal was unnecessary because the Request for Reconsideration placed the application into condition for allowance.

Applicant recognizes that 37 C.F.R. § 1.26(a) states that "[a] change of purpose after the payment of fee, such as when a party desires to withdraw a patent or trademark filing for which a fee was paid, including application, an appeal or request for oral hearing, will not entitle a party to a refund of such fee." Applicant respectfully submits that there has been no "change of purpose" in the filing of the Notice of Appeal. Instead, the Notice of Appeal was rendered moot by the actions of the PTO and therefore the fee was never owed and it was clearly paid in excess.

In light of the foregoing, refund of this fee in the amount of \$320 is hereby requested. The Commissioner is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17 and 1.21 that may be required by this paper, and to credit any overpayment including the refund, to Deposit Account No. 02-4800.

Respectfully submitted,
BURNS, DOANE, SWECKER & MATHIS, L.L.P.

By: 

Charles F. Wieland III
Registration No. 33,096

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620

Date: February 19, 2004



STATUS AND ENTITY
BRANCH

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

14. FEB 24 PM 2:50

January 21, 2004

PLATON N MANDROS
BURNS DOANE SWECKER & MATHIS LLP
P O BOX 1404
ALEXANDRIA, VA 22313-1404
US

Dear Sir/Madam,

This is to deny your refund request in the amount of \$320.00, for patent/serial number 09671670.

No refund due at this time.

Sincerely,

Lashaun O'Bryant
Technical Center 2800
Refund Branch, Office of Finance

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Pum/cfw

BURNS, DOANE, SWECKER & MATHIS, L.L.P. RECEIVED
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